DRN-4183453

The complaint

Mr A is complaining about Specialist Motor Finance Limited's (SMFL) decision to lend to him.

What happened

In March 2017, Mr A took out a hire purchase agreement with SMFL to finance the purchase of a car. He borrowed £4,295 over a 48 month term, with monthly repayments of £154.11. He says that at the time he was borrowing from every payday loan company that would lend to him as he had a gambling addiction. So he thinks SMFL shouldn't have lent to him.

Mr A says he missed around 15 payments and was chased daily by phone and over text message as well as being charged late payment fees. He says this put additional strain on his marriage.

Mr A was in and out of employment during the term of the agreement, most recently in January 2021. SMFL told him they would write off the remaining balance and allow him to keep the car. But a third party has been chasing him for the debt of around £600 – which has been causing him further stress.

Mr A complained to SMFL but they didn't uphold his complaint. They said Mr A had told them on his credit application that he was earning £5,600 net per month but that they'd been unable to verify his income electronically. So they'd requested payslips and adjusted his income to £3,522. They'd checked Mr A's credit history, which showed some defaulted accounts, but most of these weren't recent. SMFL said they specialise in providing credit to people who may have experienced financial difficulty previously, so some level of previous missed payments wouldn't be a reason to decline an application.

SMFL explained they'd used a cost of living index to estimate Mr A's monthly expenditure at £2,430.18, and used credit reference data to calculate his monthly credit commitments at £215.25. They said that left Mr A with estimated disposable income of £876.57 against the monthly loan repayment of £154.11 – which showed the loan was affordable.

SML added they hadn't seen evidence of the multiple defaults and county court judgments (CCJs) that Mr A referred to and could only base their decision on what was on the credit file at the time of the application. In relation to Mr A's loss of employment and difficulties in paying, SMFL said they'd made arrangements with him and offered him a deferral of payments. They said contact became increasingly infrequent and in November 2021, Mr A told them he couldn't find alternative employment. SMFL's letter said they decided to write the remaining £601.66 off at this time and allow Mr A to keep the car.

Mr A brought his complaint to our service. Our investigator looked into things and upheld the complaint – saying she didn't think SMFL had carried out proportionate checks. She said if SMFL had carried out proportionate checks they should have concluded it wasn't responsible to lend to Mr A. She also said SMFL hadn't acted fairly in passing Mr A's debt to a third party when they'd told him they'd written it off. Our investigator concluded that SMFL should refund to Mr A any payments in excess of £4,295, together with interest at 8%. She also said they should pay him £100 compensation for the worry caused by pursuing him for the debt, and remove any adverse information recorded on Mr A's credit file in relation to the hire purchase agreement.

Mr A accepted our investigator's view. SMFL didn't provide a full response within the timeframe – they asked to see the bank statements our investigator had reviewed, and they asked about some specific figures she'd referred to in her view. They implied they'd provide a further response once they'd looked at the bank statements but hadn't done so at the time of writing my decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did SMFL carry out proportionate checks?

The first thing SMFL noted was that Mr A had overstated his income on his application – he'd said it was £5,600 but when they checked his payslip they calculated it to be around £3,500. CONC 5.3.7R (at the time of the application) says a firm mustn't accept an application for credit when it knows that a consumer hasn't been truthful in completing the application. Mr A's salary at the time was made up of a mix of basic and commission so it's possible Mr A's estimate was optimistic rather than untruthful. But I think it's enough to suggest SMFL ought to have carried out additional checks.

The credit file data SMFL obtained shows five defaults. SMFL said they weren't concerned about these as most weren't recent. But the credit file data shows that Mr A was still making minimum amount repayments against accounts that had defaulted in 2012 and 2013. And the most recent default had been around 9 months before Mr A's application to SMFL. Whilst SMFL said this had been settled in full, the credit file annotation says "Debt Assigned" and shows a balance of £746 which implies that it had been passed to a third party rather than paid. The credit file also showed four missed payments within the past 12 months – two on a loan and one each on a current account and a credit card. Finally, it showed a CCJ (albeit this had been satisfied), and that the balance on Mr A's active credit card was well over its credit limit.

In summary, it's fair to say Mr A's credit file data at the time was indicative of someone who was struggling to manage credit and make payments when they were due. Taking that together with the fact that Mr A had overstated his income suggests it wouldn't be sufficient to take a standardised approach when assessing whether Mr A would be able to make repayments under a new loan agreement. But SMFL did take a standardised approach – using statistical data to estimate his monthly expenditure. It follows that I don't think SMFL did carry out proportionate checks – so I've thought about what they should have looked at and what they'd have found.

What would SMFL have found?

A proportionate check would have involved SMFL finding out more about Mr A's income, expenditure, and credit commitments. Mr A completed a summary of income and expenditure for a debt collection agency about a week before applying for the loan with SMFL. This set out total income for his household of £3,700 and total expenditure of £3,616 – suggesting the hire purchase agreement wasn't affordable for Mr A. However, it wouldn't have been appropriate for SMFL to fully rely on Mr A's answers to this because they'd already identified he'd been inaccurate in estimating his income.

So a proportionate check would most likely have involved looking at Mr A's bank statements. I've looked at statements for two of Mr A's accounts for the three months preceding his application to SMFL. These two accounts appear to contain the majority of Mr A's income and expenditure so I haven't asked for statements for a third account which is referenced on one of these statements.

The bank statements show Mr A's sources of income were his salary, some ad hoc payments from a relative, and income from gambling. They also show numerous receipts from short-term, high-cost lenders – during the three-month period he borrowed from one lender on six occasions, and from another on one occasion.

Looking at Mr A's expenditure, a large proportion of his salary was transferred to his wife each month – around £3,700. Mr A's told us he paid his salary to his wife who then paid the bills including most of his loan repayments because otherwise they wouldn't get paid. This is consistent with the evidence on his bank statements which show that the direct debit payment to a credit card provider bounced in each of December 2016, January 2017 and February 2017. Mr A also had a monthly direct debit to a pawnbroker of around £135. The bank statements show a small amount of day-to-day expenditure but don't include any regular committed expenditure.

Finally, the bank statements show a very high number of gambling transactions – multiple transactions across multiple days of each week. This is consistent with Mr A's testimony that he was struggling with a gambling addiction at the time SMFL decided to lend to him.

Taking all of this together, I'm satisfied SMFL didn't make a fair lending decision. It should have been clear to them that Mr A wouldn't be able to sustainably make repayments under the agreement. And it follows that they shouldn't have lent to him.

Have SMFL treated Mr A unfairly in any other way?

Part of Mr A's complaint is that he is still being chased for around £600 outstanding on the loan, despite SMFL having said they would write off the balance.

SMFL's letter to Mr A dated 9 November 2022 said they'd taken the decision in November 2021 to write off the balance, not pursue Mr A any further, and for him to keep possession of the vehicle. But I've seen evidence of a debt recovery company contacting Mr A to try to recover the balance – for example in October 2022.

Because I've concluded SMFL shouldn't have lent to Mr A, there should be no outstanding balance (as I'll explain below), and so Mr A shouldn't receive any more contact in relation to this balance. In addition, I think SMFL should pay Mr A £100 to compensate him for the upset caused by passing his debt on when they'd said they would write it off.

Putting things right

It's not possible to put Mr A back in exactly the position he'd have been in if it wasn't for SMFL's unfair lending decision. Mr A has paid far more than the cash price of the car and SMFL has told him he can keep the car. However, as I don't think SMFL should have approved the hire purchase agreement, it's not fair for them to keep the interest and charges. SMFL should therefore refund all the interest and charges applied to the agreement, treating everything Mr A paid in excess of the original cash price as an overpayment. SMFL should then add 8% simple interest per year from the date of each overpayment to the date of settlement.

SMFL should also remove any adverse information they recorded on Mr A's credit file in relation to this agreement.

My final decision

As I've explained above, I'm upholding this complaint. Specialist Motor Finance Limited must:

- Refund any payments Mr A made in excess of £4,295, adding simple interest at 8% per year from the date of each overpayment to the date of settlement;
- Ensure Mr A is no longer contacted in relation to the outstanding balance;
- Pay Mr A £100 in addition to the above refund; and
- Remove any adverse information recorded in Mr A's credit file in relation to this agreement.

If Specialist Motor Finance Limited consider tax should be deducted from the interest element of my award they should provide Mr A a certificate showing how much they've taken off so that Mr A can reclaim that amount, assuming he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 August 2023.

Clare King
Ombudsman